

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

October 29, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 21, 2007

Case Number: TSO-0509

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") for continued access authorization. This decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should not be restored.

I. APPLICABLE REGULATIONS

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

II. BACKGROUND

The Individual is employed by a contractor at a DOE facility. The Individual was arrested on March 25, 2006, for Driving While Intoxicated (DWI). The Individual reported this arrest to the local security office (LSO) at the DOE facility where he works.

The Individual was referred to and examined by a DOE contractor psychiatrist (DOE Psychiatrist) in January 2007. In his evaluative report on the Individual, the DOE Psychiatrist

diagnosed the Individual as suffering from Alcohol Dependence, with Physiological Dependence, in Early Partial Remission.

In April 2007, the LSO informed the Individual that his history of excessive alcohol use, the DOE Psychiatrist's diagnosis of Alcohol Dependence, and his failures to provide accurate information to DOE clinicians and security officials constituted derogatory information that created a substantial doubt as to his continued eligibility for an access authorization under 10 C.F.R. § 710.8(f), (j) and (l) (Criterion F, J and L respectively). April 2007 Letter from Manager, Personnel Security Division, to Individual (Notification Letter).

A hearing was held in this matter. At the hearing, the LSO presented one witness, the DOE Psychiatrist. The Individual offered his own testimony at the hearing.¹ The LSO submitted 30 exhibits (Ex. 1-30) for the record.

III. FACTUAL FINDINGS

The facts in this case are not in dispute. A brief summary is provided below.

The Individual was arrested in June 1993 for Disorderly Conduct and four counts of Battery. Ex. 16 at 25; Ex. 5 at 37. The Individual was later arrested in March 1997 for DWI. During this arrest, the Individual's BAC was measured at 0.14%. Ex. 5 at 24, 34.²

The LSO conducted a personnel security interview (PSI) with the Individual in November 2001 (2001 PSI) in which he stated that before the June 1993 arrest he had consumed approximately eight beers prior to the incident. Ex. 16 at 2. He also described his arrest in March 1997 for DWI. Ex. 16 at 20-23. In this PSI, the Individual expressed his intention not to consume alcohol and operate an automobile in the future. Ex. 16 at 37.

The Individual signed a Questionnaire for National Security Positions form in January 2001 (1/01 QNSP) in which he answered "No" to a question whether he had ever been charged with an offense related to alcohol. Ex. 21 at 7. Later, in March 2002, the Individual signed another Questionnaire for National Security Positions form (3/02 QNSP) in which he only reported his arrest in 1997. Ex. 20 at 7.

During a 2002 examination by a DOE facility psychologist (Facility Psychologist), the Individual denied ever having been arrested for an alcohol-related charge. Ex. 10 at 2. The Individual was referred to a counselor regarding marital problems he was experiencing as well as his alcohol consumption. Ex. 5 at 148. The counselor recommended that the Individual reduce his alcohol consumption. After four visits, the sessions were ended. Ex. 5 at 147-49. The Individual did not reduce his alcohol consumption at that time.

The Individual completed and signed various Questionnaires for National Security Positions in February 2004 (2/04 QNSP), December 2004 (12/04 QNSP) and November 2005 (11/05 QNSP).

¹ The DOE Psychiatrist heard all of the testimony offered at the hearing.

² According to the Individual this charge was later dropped. Ex. 20 at 7.

In each of these Questionnaires, the Individual answered “No” to the question whether he had ever been charged with an offense related to alcohol. *See* Ex. 19, 18, 17 (respectively).

In March 2006, the Individual was arrested for DWI. After reporting the arrest, the Individual was referred to a psychologist (Second Psychologist) for a psychological evaluation. Ex. 10. In his report dated June 28, 2006, the Second Psychologist noted that the Individual admitted lying twice to him concerning the March 2006 arrest. Ex. 10 at 3. The Second Psychologist also noted that an examination of the available records indicated a pattern of lying, citing the Individual’s failure to reveal his alcohol arrests to the Facility Psychologist in 2002 and the Individual’s failure during a 2004 interview to reveal that he had been suspended from school and had fathered a son. Ex. 10 at 3. The Individual was subsequently placed on work restrictions in June 14, 2006, which included random alcohol testing and complete abstinence from alcohol. Ex. 13; Ex. 14.

The Individual made a decision to stop consuming alcohol on June 14, 2006, the same day he was placed on work restrictions. Transcript of Hearing (Tr.) at 33. However, the Individual consumed two glasses of wine at his brother’s wedding on August 21, 2006 and a glass of wine during Thanksgiving of 2006. Tr. at 33-34.

The LSO asked the Individual to complete a Letter of Interrogatory (LOI) in September 2006 concerning his alcohol consumption. Ex. 11. In the LOI, the Individual admitted being “dishonest” with the Second Psychologist. Ex. 11 at 3. The LSO subsequently conducted a personnel security interview with the Individual in November 2006 (11/06 PSI). Ex. 5.

The LSO then referred the Individual to the DOE psychiatrist who conducted an examination of the Individual in January 2007. In his subsequent evaluative report dated January 18, 2007 (Report), the DOE Psychiatrist diagnosed the Individual as suffering from “Alcohol Dependence, with Physiological Dependence, in Early Partial Remission.” Ex. 3 at 9. The DOE Psychiatrist opined in the Report that for the Individual to demonstrate rehabilitation or reformation, he would have to enter into a two-year period of moderate outpatient treatment, such as Alcoholics Anonymous while abstaining from alcohol during that two-year period. Ex. 3 at 12.

IV. ANALYSIS

A. Criteria F and L

Criterion F pertains to information that a person has “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sec. 710.20 through Sec. 710.31.” 10 C.F.R. § 710.8 (f). Criterion L refers to information indicating that an individual has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy” 10 C.F.R. § 710.8(l). The derogatory information cited for both Criteria overlaps and consists of the Individual’s failure to give accurate information in a number of

QNSPs as well as the Individual's admitted dishonesty in failing to provide accurate information during various interviews.

A review of the record shows that the LSO had more than sufficient evidence to invoke Criteria F and L in the present case. In the 1/01 QNSP, 2/04 QNSP, 12/04 QNSP and 11/05 QNSP, the Individual answered "No" when asked if he had ever been arrested for an alcohol-related charge. The Individual has also admitted trying to deceive the Second Psychologist during an examination in March 2006. Tr. at 30-31. At the hearing, the Individual admits not accurately filling out the various QNSPs because "I was just afraid that it would harm my trying to get my Q clearance. . ." Tr. at 28.

The Individual asserts that all of the misrepresentations are related to his alcohol consumption and that since his difficulties with regard to his last DWI arrest, he has been scrupulously honest with DOE. Tr. at 28-29, 31. He testified that in his latest QNSP completed in January 2007, he has listed all of his alcohol-related arrests. Tr. at 28. He further testified that at his second meeting with the Second Psychologist, he voluntarily admitted that he had lied in their first meeting. Tr. at 30-31.

Based on the evidence presented to me, I do not find that the Individual has mitigated the Criteria F and L derogatory evidence presented by the LSO. There is no obvious medical or other type of expert that an individual can produce to support rehabilitation from falsification. A Hearing Officer must therefore look at the statements of an individual and facts surrounding the falsification in order to assess whether the individual has rehabilitated himself from the falsehood and whether granting or restoring the clearance would pose a threat to security. *Personnel Security Hearing (Case No. VSO-0255)*, 27 DOE ¶ 82,801 at 85,816 (1999); *see Personnel Security Hearing (Case No. VSO-0327)*, 27 DOE ¶ 82,844 (2000); In the present case, the Individual's most recent falsification occurred in June 2006, only approximately 14 months from the date of the hearing. The extent of the falsifications have extended over a four-year period from 2001 through 2006. Further, I find the Individual's pattern of falsification to be intimately connected to his difficulties with alcohol. As I will discuss below, the Individual's alcohol problem is still not completely resolved thus potentially putting him at risk not to be honest in the future concerning his alcohol use. I cannot at this time find that the Criteria F and L concerns related to the Individual's honesty have been sufficiently mitigated.

B. Criteria J

1. Security Concern

Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. 710(j). In the present case, the LSO has sufficient grounds to invoke this criterion given the DOE Psychiatrist's diagnosis of Alcohol Dependence.

2. Hearing Testimony

The DOE Psychiatrist, at the hearing, testified that the Individual had a history of “fairly severe” alcohol-related problems. He further testified that the Individual began to consume alcohol at a relatively early age (16), a negative prognostic factor, and that he had a family history of alcoholism. Tr. at 9-10. Additionally, the Individual had several alcohol-related arrests and had a significant level of denial concerning his alcohol problem, as evidenced by his failure to admit to alcohol-related arrests in the QNSPs. Tr. at 9-12. The DOE Psychiatrist also noted that the Individual continued to consume alcohol even after being placed on a work restriction that barred his use of alcohol, and that the Individual admitted during the interview that he had developed tolerance to the effects of alcohol during one period in his life. Tr. at 11-12. The DOE Psychiatrist also found significant the fact that the Individual informed him that his alcohol use was “70 percent” of the reason that his marriage ended. Tr. at 12. The DOE Psychiatrist concluded that the above-mentioned facts led him to diagnose the Individual as Alcohol Dependent. Tr. at 12-13.

The Individual testified that he believes that he has an alcohol problem. Tr. at 36. His current plan is to avoid consuming alcohol and to avoid contact with it. Tr. at 34. The Individual testified that he believes that continued abstinence from alcohol is his only chance to regain his security clearance. Tr. at 35. With regard to his current period of abstinence, the Individual testified that he was relying on his own will-power and his spiritual faith to avoid consuming alcohol and had not sought any type of professional treatment program or a group such as Alcoholics Anonymous. Tr. at 35-36. The Individual asserted that his current girlfriend and his family are positive sources of support and testified that they are fully aware of his alcohol problem. Tr. at 36-37, 39. He believes that his participation in various church activities also helps him to avoid consuming alcohol. Tr. at 38-39. As part of this participation, he speaks to young people at church concerning the misuse of alcohol. Tr. at 37. If he experienced a personal adversity in the future, he would seek counsel from one of the professional counselors who are available at his workplace. Tr. at 44.

After listening to the Individual’s testimony, the DOE Psychiatrist testified that while the Individual, as of the date of the hearing, has approximately 14 months without significant alcohol-related problems and nine months of sobriety, he still believes that a two-year period of abstinence plus some sort of treatment program would be the minimum required before the Individual could show reformation or rehabilitation, and that the Individual has not met that recommendation. Tr. at 48. He believes that the Individual is “off to a good start” but cannot be considered rehabilitated. Tr. at 49-50.

3. Analysis

The evidence before me establishes that the Individual has a significant alcohol problem. The DOE Psychiatrist’s opinion is strongly supported by the evidence before me. The Individual himself has stated his own belief that he has an alcohol problem. The sole question before me is whether the Individual has shown sufficient rehabilitation or reformation from his alcohol problem. As discussed below, I find that the Individual is not sufficiently rehabilitated or reformed to resolve the security concerns raised by his alcohol problem.

The DOE Psychiatrist recommended abstinence for a period of two years plus an outpatient treatment program. As of the date of the hearing the Individual had nine months of abstinence (from his last consumption of alcohol on Thanksgiving 2006), based upon his own uncorroborated testimony. Significantly, the Individual has not sought any type of treatment program for his alcohol problem. While the Individual's testimony indicates he has abstained from alcohol for nine months as of the date of the hearing and has some positive factors such as family and spiritual support, these considerations do not outweigh the relatively recent beginning of his abstinence, the lack of any type of outpatient treatment, and the lack of additional evidence to support his testimony as to his current period of abstinence. Consequently, I cannot find that he has mitigated the security concerns raised by his alcohol problem.

V. CONCLUSION

As explained above, I cannot find that the security concerns under Criteria F and L related to the Individual's failure to provide accurate information to the DOE have been resolved. Nor can I find that the Criterion J concern related to the Individual's past excessive alcohol misuse has been resolved. Therefore, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: October 29, 2007